

**Minutes
HEARING OFFICER
SEPTEMBER 4, 2007**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

David Williams, Hearing Officer
Steve Abrahamson, Planning and Zoning Coordinator
Sherri Lesser, Senior Planner
Shawn Daffara, Planner II
Jon Christopher, Planner II

Number of Interested Citizens Present: 27

Meeting convened at 1:30 PM and was called to order by Mr. Williams.

1. Mr. Williams approved the Hearing Officer Minutes for August 21, 2007.

2. Mr. Williams noted that the following case(s) had been continued:
 - Hold a public hearing for a request by the **VULLO RESIDENCE (PL060722)** (Curt Wilt/Architect, applicant; Rick Vullo, property owner) located at 2034 South College Avenue in the R1-6, Single Family Residential District for:

VAR07019 Variance to reduce the rear yard setback from the required fifteen (15) feet to two (2) feet.
CONTINUED TO THE SEPTEMBER 18, 2007 HEARING OFFICER
 - Hold a public hearing for a request by the **FOX RESIDENCE (PL070306)** (Darwin Fox, applicant/property owner) located at 520 East Manhattan Drive in the R1-6, Single Family Residential District for:

VAR07021 Variance to raise the height of the fence/wall in the front yard setback from four feet (4') to five feet eight inches (5' 8").
CONTINUED TO THE SEPTEMBER 18, 2007 HEARING OFFICER
 - Hold a public hearing for a request by **AA BUDGET MINI-STORAGE – U-HAUL (PL070307)** (Dilbert Martin, applicant; Dondel Inc. property owner) located at 1964 East University Drive in the GID, General Industrial District for:

ZUP07097 Use permit to allow vehicle rentals (trucks, vans, trailers).
CONTINUED TO THE SEPTEMBER 18, 2007 HEARING OFFICER

- Hold a public hearing for a request by the **GARZA RESIDENCE (PL070320)** (Terry Williams/Williams Development Company, applicant; Joan Garza, property owner) located at 1014 East Knox Road in the AG, Agricultural District for:

ZUP07119 Use permit standard to reduce the east side yard setback by twenty percent (20%) from twenty feet (20') to sixteen feet (16').

CONTINUED TO THE SEPTEMBER 18, 2007 HEARING OFFICER

-
3. Hold a public hearing for a request by the **ROWLEY RESIDENCE (PL070041)** (Steve Briggs/TEBO LLC, applicant; Chris Rowley, property owner) located at 948 South Ash Avenue in the R-3, Multi-Family Residential Limited District for:

ZUP07016 Use permit to allow tandem parking for a multi-family project.

VAR07006 Variance to reduce the north side yard setback from 10 feet to 3 feet.

VAR07007 Variance to reduce the west rear yard setback from 15 feet to 4 feet.

Mr. Robert Briggs, TEBO LLC, was present to represent this case.

DECISION:

Mr. Williams approved PL070041/ZUP07016/VAR07006/VAR07007 subject to the following conditions:

1. The driveway to be a minimum of seventeen (17) feet width to accommodate two parking spaces (8.5' x 18' standard). Locate all parking spaces behind the front yard and street side yard setbacks.
 2. Obtain all necessary clearances from Design Review and Building Safety Division.
-

4. Hold a public hearing for a request by the **TRICK RESIDENCE (PL070298)** (Stan Patton, applicant; Robert Trick, property owner) located at 304 East 15th Street in the R1-6, Single Family Residential District for:

ZUP07093 Use permit to allow an accessory building (pool cabana).

Mr. Robert Trick was present to represent this case.

DECISION:

Mr. Williams approved PL070298/ZUP07093 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
 2. Detached structure to be compatible in design, materials and color with main (existing) dwelling.
 3. The detached accessory building shall not be used as a separate living unit (no cooking facilities). Only one residential unit allowed in the R1-6, Single Family Zoning District.
-

5. Hold a public hearing for a request by the **RADICK RESIDENCE (PL070326)** (Cornel Radick, applicant/property owner) located at 1335 East Fremont Drive in the R1-6, Single Family Residential District for:

ZUP07120 Use permit standard to reduce the rear yard by twenty percent (20%) from fifteen feet (15') to twelve feet (12') feet for a patio addition.

Mr. Cornel Radick was present to represent this case.

APPROVED

DECISION:

Mr. Williams approved PL070326/ZUP07120 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
 2. The use permit approval is valid from the plans as submitted to and approved by the Hearing Officer.
 3. The building addition shall match the existing residence in design, color and materials.
-

5. Hold a public hearing for a request by the **TALEN RESIDENCE (PL070327)** (Emily Talen, applicant/property owner) located at 111 West 12th Street in the R-2, Multi-Family Residential District for:

ZUP07109 Use permit to allow required parking in the front yard setback.

Ms. Emily Talen was present to represent this case.

Discussion regarding additional condition related to option for multi-family use of the property and parking revisions which would then be required.

DECISION:

Mr. Williams approved PL070327/ZUP07109 subject to the following conditions:

1. The use permit is valid for the plans as submitted to and approved by the Hearing Officer.
 2. The required permits and clearances shall be obtained from the Building Safety Division.
 3. **If the property owner exercises multi-family use for this property as allowed in the R-2, Multi-Family Residential District, parking shall conform to existing Zoning and Development Code, Part 4, Chapter 6. (Added by Hearing Officer)**
-

6. Hold a public hearing for a request by **THE CEDARS (PL070330)** (Alan Turley/Turley Design Affiliates, applicant; AIMCO, property owner) located at 2003 North McAllister Drive in the R-3, Multi-Family Residential Limited District for:

ZUP07107 Use permit standard to reduce the front (west) yard setback by twenty percent (20%) from twenty (20) feet to sixteen (16) feet.

VAR07022 Variance to reduce the on site driveway length from twenty feet (20') to sixteen feet (16').

Mr. Alan Turley was present to represent this case.

Ms. Lesser, staff planner, clarified meaning of "bonus room" and stated that if this turns into a third bedroom or livable space, the additional parking needs must comply with Zoning and Development Code, Part 4, Chapter 6.

Mr. Turley inquired about the expense of obtaining permit parking and whether it would be a one-time or recurring expense. Ms. Lesser referred the applicant to the City Traffic Engineering staff for details.

The following interested citizens spoke:

Rick Bedore, of 2210 North McAllister Avenue – has concerns regarding overflow parking from this project onto his side of the street, from both The Cedars' residents and guests of their residents. Ms. Lesser directed Mr. Bedore to Condition #4 related to permit parking.

Darlene Justus, North Tempe Neighborhood Association (NTNA), of 315 East Garfield – has concerns regarding Condition #4 related to permit parking and who would be given permits. Ms. Lesser clarified that permits are tied to the addresses of the individual homes.

APPROVED

DECISION:

Mr. Williams approved PL070330/ZUP07107/VAR07022 subject to the following conditions;

1. Obtain a Development Plan Approval for the exterior modifications to the building elevations and site plan.
2. Obtain all necessary clearances from the Building Safety Division.
3. Property owner to provide documentation to the North Tempe Neighborhood Association and the immediate neighbors and application file; verifying their management of tenant storage and on site parking. This documentation to include verification that one parking space will always be maintained within the garages and that at no time will vehicles overhang or park on City sidewalks.
4. Applicant to work with Traffic Engineering Department to institute a permit parking system for McAllister Road; at the expense of the applicant. This process to be installed prior to issuance of building permits.
5. **Conversion of livable space or garage space to an additional bedroom shall require compliance with existing Zoning and Development Code, Part 4, Chapter 6, related to parking. (Added by Hearing Officer)**

7. Hold a public hearing for a request by **PAPAGO BUTTE WATER TREATMENT – MOTOROLA (PL070336)** (Alan Wawrzyniak/Patriot Tower, applicant; City of Tempe, property owner) located at 255 East Marigold Lane in the AG, Agricultural District for:

ZUP07112 Use permit to allow a wireless antenna tower not to exceed a height of one hundred twenty feet (120').

ZUP07113 Use permit to allow an accessory building (antenna equipment).

Mr. Dale Gray of Patriot Towers was present to represent this case.

Mr. Williams requested to see the picture of the Curry Road view of this site, and had questions regarding the colors as mentioned in conditions #3, 6, 7 and 8.

Ms. Darlene Justus (NTNA) spoke and confirmed that the NTNA would allow a consultant to determine the colors to be used.

DECISION:

Mr. Williams approved PL070336/ZUP07112/ZUP07113 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division of the Development Services Department.
2. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
3. The proposed tower, antennas, per the agreement with the North Tempe Neighborhood Association shall be painted to blend in with the surrounding terrain.
4. The wireless device shall be removed within 30 days of discontinuance of use.
5. All comments from Site Plan Review (SPR07092) shall be resolved during Building Permit Plan Review.
6. The perimeter fencing shall be eight (8) foot wrought iron that will be painted to match the natural surroundings.
7. The access gate shall be eight (8) foot wrought iron that will be painted to match the natural surroundings.
8. The proposed fuel tank shall be screened by an equal height CMU block wall. The wall shall be painted to match the natural surrounding.
9. The access gate and shelter doors shall required security lighting that meets five (5) foot candles at the gate/doors and two (2) foot candles within a fifteen (15) foot radius.
10. All light fixtures shall be full cut off and fixture cut sheets shall be reviewed during Building Permit Plan Review.

8. Hold a public hearing for a request by **RJO MANAGEMENT LLC d.b.a. ELECTRIC HAVEN TATTOO (PL070349)** (Richard Oliver/RJO Management LLC, applicant; Silor LTD Partnership, property owner) located at 3402 South McClintock Drive in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07121 Use permit to allow a tattoo parlor and barber shop.

Richard and Joan Oliver were present to represent this case.

Mr. Abrahamson, Planning and Zoning Coordinator, stated that staff had received an e-mail in opposition of this case from Mr. Bill Hunse.

The following interested citizens spoke:

Jeff Melcher, of 1740 East Laguna – resides directly behind this site. In opposition to this request. Concerned about “clustering” and commercial impact on the adjacent neighborhood, and undesirable types of businesses.

Kriste Melcher, of 1740 East Laguna – resides directly behind this site. In opposition to this request. Concerned about “clustering” and would like to see the City implement a separation agreement related to the same type of businesses, residential neighborhoods and schools. Concerned about the approval of two other tattoo parlors which are within one to one and one-half miles of this site. Concerns regarding the decline of the property as a whole and what the City is doing about this matter. Concerned about loitering on this site. Concerned about adherence to conditioned hours of operation.

Bill Hunse, of 1957 East Balboa – In opposition to this request. Has concerns about the decline of the center as a whole and current ownership non-compliance with original agreements and requirements of the center as a whole. Mr. Williams directed Mr. Hunse that these were commercial code compliance issues and asked Mr. Hunse to refrain. Mr. Williams asked Mr. Hunse if he had any other comments related to the request for a use permit. Mr. Hunse responded by asking if this would be a matter to bring to the City Council. Again, Mr. Williams requested Mr. Hunse to respond to only the request for a use permit. Mr. Hunse stated that he had concerns regarding several design issues related to ADA compliance, etc., and thought that the applicant should be made aware.

Mr. Williams asked Mr. Abrahamson if there would be a Building Safety review of construction plans, and Mr. Abrahamson replied that, should there be tenant improvements on the interior of the property, there will be a review by Building Safety Division staff.

Ms. Darlene Justus (NTNA) – In opposition to this request. She had concerns related to the current number of tattoo parlors in Tempe and that the State of Arizona and City of Tempe had no regulations and monitoring in place. She feels that the City and the State need to implement regulations and separation agreements related to businesses which have residual affects. She also stated that commercial areas such as the site in question in North Tempe are suffering.

Mr. Williams asked that the City of Tempe initiate discussion to create code text amendments for separation requirements between body modification related businesses and the same type of businesses, residential neighborhoods, and schools.

Mr. Williams raised the topic of the City's stand on tattoo parlors in general. Mr. Abrahamson stated that there is no separation requirement related to body modification establishments. A local body modification industry group

has corresponded with Planning staff, indicating they would prefer there be a separation requirement between similar types of businesses. This will be forwarded through for further discussion and possible code text amendment.

Mr. Williams raised the topic of operating hours for a tattoo parlor. Mr. Abrahamson indicated that, should the tattoo parlor deviate from the established hours of operation as contained in the conditions of approval for this request, the business would be considered in non-compliance and could be brought before the Hearing Officer or Board of Adjustment for further review of the use permit.

Mr. Oliver made a comment regarding Cold Stone Creamery, also a tenant in this center, and the observance of loitering at their location.

DECISION:

Mr. Williams approved PL070349/ZUP07121 subject to the following conditions:

1. Prior to the use permit becoming effective, the establishment must have written procedures on the proper handling and sterilization of equipment and demonstrate that all personnel are trained in the procedures.
2. Prior to the use permit becoming effective, all practitioners must have training in blood-borne pathogens and cross-contamination.
3. Prior to the use permit becoming effective, the establishment must post and provide to customers, upon request, written instructions on tattoo care.
4. All business signs shall have required sign permits obtained prior to installation.
5. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer.
6. This use permit is not transferable. Should the business be sold, the new owners must process through the Hearing Officer for a new use permit.
7. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
8. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
9. Any intensification or expansion of this use shall require that a new use permit be applied for and obtained.
10. **Install "No Loitering" signage; staff to approve details. (Added by Hearing Officer)**
11. **Develop an approved security plan with the City of Tempe Police Department. (Added by Hearing Officer)**

-
9. Hold a public hearing for a request by the **JOHNSON RESIDENCE (PL070352)** (Alan Johnson, applicant/ property owner) located at 5439 South Hazelton Lane in the R1-6, Single Family Residential District for:

ZUP07122 Use permit to allow an accessory building (garage/workshop).

Mr. Alan Johnson was present to represent this case.

Mr. Johnson had questions regarding color match as stated in Condition #2.

Mr. Williams had questions regarding access from the side street on the south, Auburn Drive. He asked about curb cuts and driveway access and required permits.

Mr. Christopher indicated that the applicant would need to contact Traffic Engineering for the necessary permits. Mr. Johnson indicated that curb cuts would not be needed.

DECISION:

Mr. Williams approved PL070352/ZUP07122 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Detached structure to be compatible in design with main dwelling; ~~colors to enclosed garage shall match principal dwelling in design and color.~~ **(Modified by Hearing Officer)**
3. The detached accessory building shall not be used as a separate living unit. Only one residential unit allowed in the R1-6, Single Family Zoning District.
4. **Applicant shall contact Traffic Engineering regarding approval and permits for access drive on Auburn Drive. (Added by Hearing Officer)**

10. Hold a public hearing for a request by the **BENSEL RESIDENCE (PL070358)** (Curt Wilt/Architectural Additions, applicant; Brian Bensel, property owner) located at 1037 East Loma Vista in the R1-6, Single Family Residential District for:

ZUP07123 Use permit to allow parking in the front yard setback.

Mr. Curt Wilt was present to represent this case.

Mr. Williams inquired if the work had already been completed on this site. Mr. Wilt indicated the work was in progress and about 75 percent had been completed.

DECISION:

Mr. Williams approved PL070358/ZUP07123 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The enclosed garage shall match the existing residence in design, color and material.
3. The detached accessory building shall not be used as a separate living unit. Only one residential unit allowed in the R1-6, Single Family Zoning District.

11. Hold a public hearing for a request by the **HAWKINS RESIDENCE (PL070367)** (Scott Hawkins, applicant/property owner) located at 38 West Louis Way in the R1-15, Single Family Residential District for:

ZUP07124 Use permit standard to reduce the front yard setback by twenty percent (20%) from thirty-five feet (35') to twenty-eight feet (28').

ZUP07125 Use permit standard to reduce the east side yard setback by twenty percent (20%) from fifteen feet (15') to twelve feet (12').

Mr. Scott Hawkins was present to represent this case.

DECISION:

Mr. Williams approved PL070367/ZUP07124/ZUP07125 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.

12. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **BANKHEAD RESIDENCE (PL070308/ABT07020)** (James Alan Bankhead, property owner) Complaint No. CE064423 located at 1736 South El Camino Drive, in the R1-6, Single Family Residential District.
WITHDRAWN BY NEIGHBORHOOD ENHANCEMENT.

APPROVED

The next Hearing Officer public hearing will be held on **Tuesday, September 18, 2007.**

There being no further business the public hearing adjourned at 3:04PM.

Prepared by: Diane McGuire, Administrative Assistant II/Dianne Garrett, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for David Williams, Hearing Officer

SA:dm:dg

APPROVED